

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 99-005 (MMS)
)	
vs.)	
)	
DENTSPLY INTERNATIONAL, INC.,)	
)	
Defendant.)	
)	

JOINT DISCOVERY REPORT

Pursuant to the Court's January 25, 1999 Order, Fed. R. Civ. P. 26(f), and D. Del. LR 16.2, counsel for plaintiff United States of America and counsel for defendant Dentsply International, Inc. ("Dentsply") met on February 2, 1999 to discuss and develop a discovery plan and order.

The parties have been able to agree on the items identified in Section A of this Report and embodied in the attached Stipulated Discovery Plan and Order.

The parties also wish to advise the Court that discovery in this matter will involve confidential information of Dentsply and third parties. The parties are attempting to develop a stipulated Protective Order that they would request the Court to enter pursuant to Rule 26(c)(7). Additionally, pursuant to D. Del. LR 16.2, the parties certify that they have conferred to discuss settlement.

As set forth in Part B of this Report, the parties have reached agreement on a number of deadlines. The parties, however, have been unable to reach an agreement regarding deadlines for expert disclosures, case dispositive motions, and exchange of witness lists. Section B sets forth the parties' respective positions on these deadlines.

A. Stipulated Terms

The parties stipulate and agree to the following:

1. The parties' disclosure of individuals pursuant to Fed. R. Civ. P. 26(a)(1)(A) shall not constitute a waiver of work product.
2. Fed. R. Civ. P. 26(a)(1)(C) and (D) are inapplicable in the context of this case, and neither party has disclosures to make under those rules.
3. Discovery is needed concerning the allegations of the Complaint that have not been admitted. Except to the extent identified in the schedule proposed in Section B of this Report, the parties currently see no reason to conduct discovery in phases, or to limit it to, or focus on, particular issues.
4. Depositions shall be scheduled at times reasonably convenient to the parties and comport with the Federal Rules of Civil Procedure and the Delaware District Court Local Rules. The parties propose no limitations on discovery in addition to any already contained in the Federal Rules and the Local Rules.

5. Each party shall deliver to the other party “Bates-stamped” copies of all documents produced to one party by any non-party in response to a Rule 45 subpoena, unless the producing non-party produces to all parties simultaneously. Each party bears the costs of their set of copies; however, photocopying costs charged to another party shall not exceed 15 cents per page. Each party shall deliver “Bates-stamped” copies totaling fewer than 1,000 pages within 5 business days after receiving the production, or within 10 business days for productions in excess of 1,000 pages.
6. Witness lists shall include individuals whom the parties expected to call live at the trial of this case, as required by Fed. R. Civ. P. 26(a)(3)(A). Each party shall be permitted to add witnesses not listed on its witness list, provided that the other party has a reasonable opportunity to obtain documents relating to each additional witness and depose each such witness prior to the close of discovery. The schedule set forth in Section B of this Report contains the parties’ conflicting positions on the deadline for exchange of witness lists. The foregoing shall not limit the parties’ right to designate testimony from depositions pursuant to Fed. R. Civ. P. 26(a)(3)(B).
7. No motions shall be filed with the Court unless a statement is filed with the Court detailing efforts made to achieve agreement on the matters set forth in the motion.

8. All case dispositive motions accompanied by an opening brief and affidavit and a brief and affidavit schedule shall be served and filed no later than the deadline established by the Court. The schedule set forth in Section B of this Report contains the parties' conflicting positions on the deadline for such motions. Failure to file said motions by the deadline shall be considered a waiver of all such motions. An order calling for a pretrial conference will issue in the absence of the timely filing of any such motion.
9. The parties stipulate and agree that the Court should enter the attached, Stipulated Discovery Plan and Order pursuant to Fed. R. Civ. P. 16(b).

B. Proposed Discovery Schedule

The schedule below sets forth the parties' respective positions on deadlines for discovery and conduct of this case. Except as modified by their proposed schedules, the parties propose no changes to deadlines set forth in the Federal Rules of Procedure and Delaware District Court Local Rules. The parties have included the deadlines on which they agree in their proposed, Stipulated Discovery Plan and Order. Under the Stipulated Discovery Plan and Order, neither party waives any right to seek appropriate protective orders in response to discovery sought by the other party.

The proposed, Stipulated Discovery Plan and Order, if entered by the Court, would modify the Court's January 25, 1999 Order by changing the deadlines for completion of discovery and filing of case dispositive motions. In the January 25, 1999 Order, the Court specified that the September

7, 1999 discovery deadline of that Order could not “be changed by counsel unless first clearing the same with the Court.” Additionally, the Court reminded counsel that “under the District Plan Pursuant to the Civil Justice Reform Act this case should be brought to trial within 12 months of the filing of the date of the complaint.”

The parties respectfully submit that this case may warrant the longer discovery period set forth in the Stipulated Discovery Plan and Order, and a trial date beyond the twelve-month period contemplated by the District Plan. At the conference between counsel on February 2, 1999, the United States advised Dentsply that the United States estimated that it would identify approximately 180 individuals pursuant to the initial disclosures called for by Fed. R. Civ. P. 26(a)(1).¹ The United States contends that the interviews it conducted with these individuals during its pre-complaint investigation are work product and protected from disclosure. Dentsply anticipates that it will need to depose a significant portion of those individuals, all of whom are third parties, as well as other persons, and that it cannot complete by September 7, 1999 the discovery necessary to defend and rebut the extensive pre-complaint investigative record that the United States has built during the past three years. Although the United States was prepared to develop a discovery plan meeting the September 7, 1999 deadline, it does not oppose Dentsply’s request for a longer period of time to complete fact and expert discovery and to file dispositive motions.

The Stipulated Discovery Plan and Order would allow Dentsply the additional time it requests and control other aspects of discovery. The Stipulated Discovery Plan and Order would

¹The United States now believes that it will identify 184 individuals.

establish November 15, 1999 as the deadline for completion of fact discovery. The parties have not, however, reached agreement as to the deadlines for exchange of witness lists, expert disclosures and case dispositive motions. The following schedule sets forth their areas of agreement and their respective positions on appropriate deadlines for expert witness disclosures, case dispositive motions, and the exchange of witness lists:

<u>Deadline</u>	<u>United States</u>	<u>Dentsply</u>
Rule 26(a)(1)(A),(B) Disclosures	2/17/99	2/17/99
Rule 26(a)(2) witness lists	10/15/99	No change from Rule (30 days before trial)
Fact Discovery	11/15/99	11/15/99
Expert Reports	12/15/99	30 days after ruling on case dispositive motions
Rebuttal Expert Reports	1/31/2000	60 days after ruling on case dispositive motions
Expert Depositions	2/29/2000	90 days after ruling on case dispositive motions
Case Dispositive Motions	2/29/2000	12/15/99
Opposition to Case Dispositive Motions	3/31/2000	1/31/2000

The parties are prepared to submit a proposed, supplemental order embodying the Court's decision on the deadlines on which they have not reached an agreement.

Respectfully submitted,

February 17, 1999

FOR PLAINTIFF
UNITED STATES OF AMERICA:

Richard G. Andrews
UNITED STATES ATTORNEY
FOR THE DISTRICT OF DELAWARE

FOR DEFENDANT DENTSPLY:

By:

_____/S/
Judith M. Kinney
Assistant United States Attorney
U.S. Attorney's Office
1201 Market Street, Suite 1100
Wilmington, DE 19801
(302) 573-6277
Delaware Bar No. 3643

Mark J. Botti
William E. Berlin
Jean Lin
Michael S. Spector
Michael D. Farber
Health Care Task Force
Antitrust Division
U.S. Department of Justice
325 7th Street, N.W., Suite 400
Washington, D.C. 20530
(202) 307-0827

James P. Hughes, Jr.(No. 3102)
YOUNG CONAWAY STARGATT &
TAYLOR, LLP
11th Fl., Rodney Square North
P.O. Box 391
Wilmington, DE 19899-0391
(302) 571-6692

Margaret M. Zwisler
Richard A. Ripley
Kelly A. Clement
Eric J. McCarthy
HOWREY & SIMON
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 783-0800